

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LAVOND HILL,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:21-cv-8
)	Judge Stephanie L. Haines
JOHN WETZEL, et al.)	Magistrate Judge Keith A. Pesto
)	
Defendants.)	

MEMORANDUM ORDER

This is a civil rights case brought under 42 U.S.C. § 1983 by Lavond Hill (“Plaintiff”), a prisoner currently incarcerated at State Correctional Institution-Phoenix (SCI-Phoenix). This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S. C. §636, and Local Civil Rule 72.

By way of background, on September 2, 2021, Magistrate Judge Pesto filed a Report and Recommendation (ECF No. 17) recommending, pursuant to his screening of Plaintiff’s Complaint (ECF No. 5) under 28 U.S.C. § 1915A and § 1915(e)(2), that the claims in Plaintiff’s Complaint (ECF No. 5) should be dismissed without prejudice. On September 29, 2021, the Court issued a Memorandum Order (ECF No. 22) that adopted Magistrate Judge Pesto’s Report and Recommendation (ECF No. 17) and dismissed Plaintiff’s Complaint (ECF No. 5) without prejudice. The Court ordered Plaintiff to file an amended complaint within twenty days. On October 20, 2021, Plaintiff filed what appeared to be a partial version of his amended complaint (ECF No. 23), and Magistrate Judge Pesto then ordered Plaintiff to file a complete copy of his amended complaint (ECF No. 24). On December 17, 2021, Plaintiff filed his Amended Complaint

(ECF No. 25).

On July 12, 2022, Magistrate Judge Pesto issued a Report and Recommendation (ECF No. 27) after screening the Amended Complaint (ECF No. 25). In his Report and Recommendation (ECF No. 27), Magistrate Judge Pesto determined Plaintiff stated an Eighth Amendment excessive force claim against Defendant Vicklund for his allegedly gratuitous use of force on January 5, 2021, but that all other claims and Defendants should be dismissed with prejudice. Plaintiff was advised he had fourteen days to file objections to the Report and Recommendation. *See* 28 U.S.C. § 636 (b)(1)(B) and (C) and Local Civil Rule 72.D.2. On August 2, 2022, Plaintiff filed his Objections (ECF No. 28).

When a party objects timely to a magistrate judge's report and recommendation, the district court must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)); *see also* Local Civil Rule 72.D.2. Upon *de novo* review of all documents, pleadings, and filings of record, the Report and Recommendation (ECF No. 27), and Petitioner's Objections (ECF No. 28), and pursuant to Local Civil Rule 72.D.2, the Court will adopt in part and reject in part the findings and recommendations of Magistrate Judge Pesto in this matter.

The Court will adopt Magistrate Judge Pesto's recommendation insofar as the Court agrees Plaintiff has stated an Eighth Amendment claim against Defendant Vicklund. Plaintiff's Eighth Amendment claims against Defendant Vicklund will proceed forward.

In Plaintiff's Objections (ECF No. 28) to Magistrate Judge Pesto's recommendation that the remaining claims be dismissed, Plaintiff primarily asserts Magistrate Judge Pesto overlooked his well pleaded allegations. Plaintiff's Objections (ECF No. 28) contain factual allegations as to

some, but not all, of the Defendants, with reference to specific incidents of abuse and punishments against Plaintiff involving these Defendants. However, Plaintiff's Amended Complaint (ECF No. 25) is over 320 paragraphs long and names over 50 individuals as Defendants. In contrast to the claims articulated in Plaintiff's Objections (ECF No. 28), in its current form, Plaintiff's Amended Complaint (ECF No. 25) is rambling, ambiguous, and does not give the named Defendants fair notice of the claims asserted against them. The confusing, laundry list nature of Plaintiff's claims in the Amended Complaint (ECF No. 25) is particularly evident given the comparative clarity of Plaintiff's claims in his Objections (ECF No. 28). The Court therefore finds Plaintiff's remaining claims fail to comply with the pleading standards in Fed. R. Civ. P. 8. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) ("[W]hile Plaintiff is afforded leniency in his filings as a *pro se* litigant, he is not exempt from satisfying basic pleading requirements."); Fed. R. Civ. P. 8(e)(1) ("[e]ach averment of a pleading shall be simple, concise, and direct.").

Nonetheless, given the liberal standards afforded *pro se* pleadings, a plaintiff should generally be granted leave to amend before the court dismisses a claim that is merely deficient. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). As Plaintiff specifically requests the opportunity to amend his claims, the Court will allow Plaintiff 30 days within which to do so.

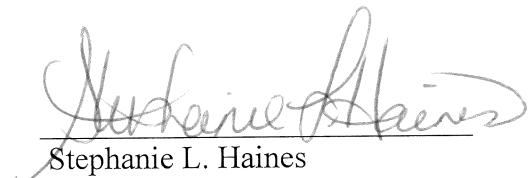
Accordingly, the Court will adopt Magistrate Judge Pesto's recommendation insofar as the Court agrees Plaintiff has stated an Eighth Amendment claim against Defendant Vicklund. Plaintiff's Eighth Amendment claims against Defendant Vicklund will proceed forward. However, the Court rejects Magistrate Judge Pesto's recommendation that Plaintiff's remaining claims should be dismissed with prejudice. The Court will grant Plaintiff's request to amend these claims. Accordingly, the following order is entered:

ORDER OF COURT

AND NOW, this 9th day of November, 2022, IT IS HEREBY ORDERED that Magistrate Judge Pesto's Report and Recommendation (ECF No. 27) is adopted as the Opinion of the Court insofar as the Court finds Plaintiff has stated an Eighth Amendment claim against Defendant Vicklund; and,

IT IS FURTHER ORDERED that the remainder of Magistrate Judge Pesto's Report and Recommendation (ECF No. 27) is rejected; and,

IT IS FURTHER ORDERED that Plaintiff's request to amend his remaining claims is GRANTED. Plaintiff shall file any amendment of his remaining claims on or before December 9, 2022.



Stephanie L. Haines
United States District Judge